

1 way involves Mr. Gardner, I want you to turn it over. Let's  
2 find out if Mr. Gardner was, in fact, involved or absented  
3 himself from the LPT affairs involving Lancaster and Lebanon.

4 MR. SCHAUBLE: Your Honor, just -- could we get an  
5 understanding with counsel? We have many of the documents  
6 here. There may be some additional documents with respect to  
7 these particular requests.

8 JUDGE CHACHKIN: You mean with you today?

9 MR. SCHAUBLE: We may need a few extra days to  
10 produce those additional documents.

11 JUDGE CHACHKIN: I'm sure they'll be willing to give  
12 you a few extra days as long as you give them the documents  
13 you already have. If they want to make a further search, I'm  
14 sure -- the same reason prevailed before, I'm sure the parties  
15 can agree to a, to a time limit for any extra documents  
16 necessary because of my ruling.

17 MR. EMMONS: Yes, Your Honor, we will reach an  
18 agreement with Glendale.

19 JUDGE CHACHKIN: All right. And 62 and 63 regarding  
20 financial liability, I don't understand what the relevance of  
21 these documents -- what bearing it has on the, the issues.

22 MR. EMMONS: Your Honor, this again goes directly to  
23 motive. George Gardner in his declaration submitted in  
24 opposition to Trinity's request for issues stated that at some  
25 point in time he determined that the LPTV stations were not

1 financially viable and that at that point he decided to turn  
2 in the construction permits.

3 JUDGE CHACHKIN: That's not exactly what he said.  
4 That's not exactly what he said. He said he turned them in  
5 because he determined on the basis -- well, I have his  
6 statement here. I have has language here if I can find it.  
7 Do you have his statement?

8 MR. EMMONS: I don't think I have the full --

9 MR. COHEN: We don't have -- unfortunately we don't  
10 have it, but we can get it for you.

11 JUDGE CHACHKIN: Well -- no, I have it right here if  
12 I can find it.

13 MR. EMMONS: I do have a --

14 JUDGE CHACHKIN: All right. Here it is. That's  
15 David Gardner's. I have it here. All right. What he said  
16 here -- he said the reason Lancaster and Lebanon LPTV stations  
17 were never constructed was the fact that W40AF lost a huge sum  
18 of money as reflected in the financial statements provided  
19 elsewhere in this opposition, and the reasoning was that since  
20 he had no success with that LPTV station and was unable to  
21 attract a significant over the air audience and had been  
22 unable to obtain carriage on cable TV, he made the decision --  
23 eventually made the decision that Lancaster and Lebanon would  
24 not be financially viable. That's what he said.

25 MR. EMMONS: Yes, Your Honor, and I believe the

1 question of when he made that decision would be relevant to  
2 motive and intent on the representations.

3 JUDGE CHACHKIN: Well, I don't quite understand  
4 that.

5 MR. EMMONS: Because his assessment of the financial  
6 viability of the Lancaster and Lebanon stations could well  
7 have been a factor in his efforts to try to sell the stations  
8 or giving up trying to sell the stations.

9 JUDGE CHACHKIN: Well, I'm -- I think we -- I've  
10 already made a decision that up to July '92 has a bearing on  
11 the misrepresentation issue. What occurred afterwards has no  
12 bearing. So his eventual decision to sell or not to sell has  
13 no bearing on his representations made in the statements to  
14 the Commission and I'm not going to -- the fact he eventually  
15 decided that it would not be financially viable has no bearing  
16 on the representations made to the Commission and, therefore,  
17 I don't see how it's relevant and I'm not going to require  
18 those documents be submitted.

19 MR. COHEN: That's all, Your Honor.

20 JUDGE CHACHKIN: Is that it? All right. That takes  
21 care of that and does that take care of all the Motions to  
22 Compel, I gather.

23 MR. EMMONS: Yes, I think it does, Your Honor.

24 JUDGE CHACHKIN: All right. The other matters we  
25 have to take care of are the affidavits, the declarations,

1 from non-public witnesses. Mr. Cohen and the Bureau, you --  
2 how do you want to do it with the non-public affidavits and  
3 non-public witnesses?

4 MR. COHEN: Well, Your Honor --

5 JUDGE CHACHKIN: First let me indicate, first let me  
6 indicate that the ones I would take up first are the 30 which  
7 -- before we take up the material from individuals.

8 MR. COHEN: Your Honor, it's my understanding and if  
9 I'm wrong, you'll be quick to tell me, I didn't understand  
10 that today you were going to rule on evidentiary objections to  
11 those 30 documents. That I understood would occur in the  
12 hearing. I thought today what you were going to be doing was  
13 to rule on the procedures to be followed. I can tell you on  
14 behalf of Glendale that we would be prepared to waive cross-  
15 examination of those 30 people and be prepared to have you  
16 rule at the hearing on relevance objections and any competence  
17 objections that wouldn't have been affected by our waiver of  
18 cross-examination. I think it would be an inappropriate use  
19 of your time to, to do -- to spend more time on those  
20 documents than I've just suggested.

21 Now, the other, the other documents were submitted  
22 pursuant to your ruling that, that Trinity could make an  
23 extraordinary showing because in effect they wanted to have  
24 more than 30. They wanted to have additionally -- additional  
25 ones. And it was my understanding that you were going to rule

1 this morning on whether you were going to permit that  
2 procedure or whether you were going to not permit it, and I'm  
3 prepared to argue, and my argument is very brief, that you  
4 should continue your ruling. That is, you should afford all  
5 parties the right to present 30 non-public witnesses. And it  
6 strikes me -- I reviewed the Trinity showing, Your Honor, and  
7 on -- the extraordinary showing and, as I said, my argument is  
8 very brief.

9           Clearly you have the discretion to limit the  
10 testimony of viewers of Channel 45. Your ruling that Trinity  
11 can present 30 public witnesses or viewers -- or non-public  
12 viewers or witnesses is fair and reasonable. It strikes a  
13 balance between affording Trinity an opportunity to present  
14 such testimony and the importance not to have cumulative  
15 testimony, and I'm underscore cumulative testimony, or  
16 testimony of marginal relevance. I believe your ruling gives  
17 Trinity more than an adequate opportunity to present such  
18 testimony. It's a fair ruling.

19           The material submitted -- and I say this with all  
20 due respect. I have reviewed it carefully. The material  
21 submitted by principally drug and drug addicts or alcohol  
22 addicted persons was moving. I was personally moved by it and  
23 I, I felt very sorry for those persons and I think anyone that  
24 had any -- of human kindness couldn't help but be moved by, by  
25 the statements of those unfortunate persons. But I submit to

1 you, Your Honor, that the material submitted is of absolutely  
2 no relevance to the renewal expectancy aspect of the standard  
3 comparative issue.

4           It, for the most part, consists of personal  
5 religious experiences, people who are drug addicts and  
6 alcoholics. Their testimony only in the most collateral sense  
7 even begins to deal with the station's programming or its  
8 reputation in the community. And, Your Honor, it's absolutely  
9 impossible to test by cross-examination personal religious  
10 experiences of the kind present in this material. We would  
11 have the right, I submit, if you'd permit this, to take these  
12 persons' depositions and/or to cross-examine them in some  
13 fashion or another, and I would say to you to you that if you  
14 said to me go ahead and take these persons' depositions or  
15 cross-examine them, I wouldn't know how to begin to cross-  
16 examine someone who's had a religious experience, someone who  
17 sat on the side of the bed and watched Channel 45 and the Lord  
18 came to him. I would, I would be absolutely unable to, to  
19 test that kind of testimony. It's not testimony that can be  
20 tested, I submit to you, and it's not proper in this  
21 proceeding, in my judgment, under the renewal expectancy  
22 aspect of the standard comparative issue.

23           Now, Your Honor, Trinity will have ample opportunity  
24 to offer its programming as part of its direct case, so it's  
25 being deprived of no rights by the type of ruling that I

1 respectfully suggest.

2 JUDGE CHACKIN: What are the Bureau's views?

3 MR. SHOOK: Well, Your Honor, previously had set a  
4 limitation concerning persons who were not connected with  
5 Trinity station in Florida who could submit their testimony  
6 that would help Trinity to establish, first of all, whether it  
7 was entitled to a renewal expectancy and, secondly, what the  
8 strength of that renewal expectancy should be. And so Trinity  
9 had a choice in terms of which 30 persons it wanted and what  
10 those 30 persons were going to speak to. And I can understand  
11 why Trinity might want to have more than 30 persons, but the  
12 question is is 30 persons an unreasonable limitation. And if  
13 it is not, is there any particular reason to have this  
14 additional testimony accepted. And I would echo Mr. Cohen's  
15 statement in the sense that reading through the extraordinary  
16 showing one could certainly be moved by, you know, how these  
17 various individuals decided that Channel 45 helped them in one  
18 way or another. But Trinity did have a choice earlier on in  
19 terms of whether to try to incorporate some of these persons  
20 into that 30 or not. They chose not to do so. And, frankly,  
21 I do not see any particular need to have the testimony  
22 expanded beyond the 30 witness limit which Your Honor has set.

23 JUDGE CHACKIN: Even assuming I didn't have a  
24 limit, do you think the testimony of individuals who had a  
25 personal religious experience would be relevant to the

1 question of renewal expectancy?

2 MR. SHOOK: I see it being marginally relevant  
3 because it is difficult from the reading that I gave of these  
4 individuals to assess what it was about any particular Trinity  
5 program that moved them in the fashion that it did or whether  
6 this -- it was purely coincidental that the Trinity program  
7 happened to be on the air or somehow affected, you know, these  
8 persons' decisions to, you know, change the direction of their  
9 lives. So while I see that there is some connection, to me it  
10 seems to be rather tenuous.

11 JUDGE CHACHKIN: Mr. Honig, do you have any  
12 comments?

13 MR. HONIG: I concur with the view that Mr. Cohen  
14 has expressed. I think that material that's been presented is  
15 moving and is valuable, but it's not valuable under the issue  
16 as I understand the issue. There are two questions, and I  
17 only want to speak to the first one, that I think Your Honor  
18 might need to rule upon. One is, is the religiosity of  
19 viewers relevant to the meritorious programming issue and, if  
20 so, is this the type of evidence that is competent and proper  
21 for that?

22 The 30 witnesses that were presented include 18  
23 church employees, pastors, lay religious leaders, many of whom  
24 I believe are the pastors of some of the individuals who are  
25 contained in the bound volume, and much of whose testimony



1 speaks to and I think confirms the type of information that's  
2 contained in the bound volume. And in that sense the value of  
3 this material, to the extent that it might be marginally  
4 relevant to the -- to the meritorious programming question, is  
5 already presented properly in these 30 declarations.

6           There are two other objections, though, that have  
7 not been stated that I have. The first is that in sense what  
8 is being done is that an argument is being advanced that if  
9 viewers of a television station with a religious format as --  
10 experience religion, that -- by definition, that ought to  
11 contribute to or allowing that station to have a renewal  
12 expectancy.

13           I believe that view is precluded for two reasons.  
14 One is the WMTN case. The same argument has been advanced and  
15 was advanced in that case that, for example, listening to  
16 classical music enriches the soul and provides people with a  
17 certain degree of cultural enrichment akin to spiritual  
18 involvement. The same argument has even been made in other  
19 cases with respect to rock music, that some of the messages  
20 contained in the music are pro-social and reach young people  
21 in a way that other programming cannot and encourage them to  
22 lead pro-social lives and improve their self-esteem.

23           The Commission held, and I believe the Supreme Court  
24 affirmed, that it's proper to look at how community needs are  
25 addressed and in deregulation proceedings the Commission

1 established a very clear procedure for doing that. We have  
2 issues -- programs lists that the station holds out that this  
3 is how we've met community needs. Channel 45 lists are very  
4 extensive. They're about 800 or 900 pages of material over 5  
5 years which we've reviewed. It's a wealth of material there  
6 which we've reviewed. Much of it is relevant and, and it's  
7 relevant without going into the format that this station has  
8 chosen to use.

9           The other objection I would have is that potentially  
10 the inclusion of this material encroaches fairly closely on  
11 the establishment clause. The Commission ruled in the Hearing  
12 Designation Order in this case that evidence that was  
13 presented by SALAD going to whether some of Trinity's funds,  
14 for example, had been used to finance a, a ministry that was  
15 controlled by one of NMTV's now former principles, and there  
16 were allegations and we have 300 pages of declarations from  
17 parents who said this is a cult that has taken our children  
18 from us, and some of the parents said that the children were  
19 being abused and were making -- being made to work in slave  
20 conditions and so forth. The Commission dismissed it and said  
21 we're not going to make an issue of whether this is a  
22 religious cult.

23           Consistent with that ruling, I think that it's  
24 improper and unnecessary to go into the question of the  
25 religiosity of the programming. It also would present an

1 enormous evidentiary problem because, while I agree with Mr.  
2 Cohen that it would be impossible to cross-examine these  
3 individuals and, indeed, even if it were, I would feel  
4 uncomfortable cross-examining these individuals about their  
5 faith. It's not inherently subject to cross-examination.  
6 That's what faith is.

7                   The difficulty is that there are at least two  
8 issues that it opens up. One is the longstanding argument of  
9 mainstream churches that, that the net effective television  
10 ministries at times diminishes the religiosity of the  
11 community as a whole because it diverts religious resources  
12 that can be used for community programs elsewhere. And that's  
13 an argument that's been made many times about this particular  
14 network.

15                   I don't think that that argument -- that that  
16 evidence is within the scope either, but certainly if this  
17 were to come in, I would find it necessary to try to introduce  
18 it.

19                   JUDGE CHACHKIN: Do you have any response to that?

20                   MR. MAY: Your Honor, we made our -- showing. We  
21 think it addresses virtually all of the issues these gentlemen  
22 have raised. We all understand the, you know, seriousness of it,  
23 but I can say that what we are focusing on here is the result,  
24 what has happened? I think it is -- cannot be disputed that  
25 somebody who was previously a drug addict who is no longer a

1 drug addict, regardless of that being bracketed as the Review  
2 Board said in the -- case, within a religious -- does not  
3 diminish the reality that what was before is no longer, and  
4 that is clearly something we believe important to the trier of  
5 fact to know. We believe that the evidence as it would be  
6 presented would be important to understand that there have  
7 been changes and they are attributed to this facility and to  
8 the kind of service that this facility provides.

9 JUDGE CHACHKIN: How are we going to establish  
10 whether the changes are attributed to these facilities? These  
11 individuals may believe that in their mind, but are we going  
12 to impanel psychiatrists and criminologists, what have you,  
13 sociologists, to determine the reasons for these persons'  
14 change of behavior? Was this sudden watching a particular  
15 program and that changed their behavior or were -- other  
16 facts. I mean, it could have been -- for instance, they could  
17 have looked at the sky and -- at the same time they watched  
18 television they could have that same day looked at the sky and  
19 seen a bolt of lightning and assumed it was the bolt of  
20 lightning. I mean, there's so many explanations for someone's  
21 behavior. They may believe very sincerely, but are we going  
22 to start -- I mean, is that the purpose of the hearing, to get  
23 into subjective effective programming? Mr. Honig pointed out  
24 what if it was rock music and could they put on children who  
25 said well, I listened to rock music and the result of the rock

1 music I was then encouraged to go on to college to continue my  
2 education or listen to classical music and the result of  
3 classical music, I suddenly became a better person because  
4 when I heard Beethoven's Ninth suddenly I felt it was time for  
5 me to do things for humanity. What criteria does -- what -- I  
6 thought the Commission -- in all the cases that you cited to  
7 me where the Commission said religious programs can be  
8 considered part of non-entertainment programming it seems to  
9 me all the case has made clear is what the Commission is  
10 looking at is objective criteria, that one could make a  
11 determination, namely a minister could say that -- show  
12 program results of religious programming that we consider --  
13 and the Commission specifically even said -- I mean, from the  
14 -- where the Court of Appeals judge said, "It is clear that --  
15 then that a licensee -- "It's clear then that a licensee may  
16 still use it's programming efforts in the religious or  
17 educational areas, for example, as evidence of its  
18 responsiveness to community issues. Thus, a program  
19 featuring a panel of priests, ministers and rabbis discussing  
20 recent statements by Catholic bishops or the morality of the  
21 nuclear arms race would certainly be considered public  
22 interest programming under either an issue or a category  
23 focus." But to -- what -- but the Commission has always in  
24 these cases looked at some objective criteria. It has always  
25 been -- it seems to me it's always also been -- the Commission

1 has not looked at religious programming as religious  
2 programming, but the fact that you use the format of religious  
3 programming to present serious public interest issues is a  
4 matter that the Commission thinks is -- can be considered in  
5 determining whether or not you're entitled to renewal  
6 expectancy or not. But, as pointed out by Mr. Honig, there  
7 are many other churches, many other types of religious  
8 programming of a different nature, and are we going to -- are  
9 we supposed to now get into some kind of discussion of whether  
10 the type of religious programming presented by your station is  
11 superior to religious programs presented by other stations, by  
12 what's considered traditional denominational religious  
13 programming? I mean --

14 MR. MAY: Respectfully, Your Honor, I think that  
15 that is off the point and I think it's presented as somewhat  
16 of a red herring.

17 JUDGE CHACKIN: What is presented as a red herring?  
18 You're asking me, you're asking me --

19 MR. MAY: The idea that other churches and what they  
20 do. They're not the licensee.

21 JUDGE CHACKIN: I understand that, but you're --

22 MR. MAY: We're talking about the impact that this  
23 has and someone says I was a drug addict. I'm not a drug  
24 addict. And they specifically -- that's not an objective  
25 fact. We can bring --

1 JUDGE CHACHKIN: That is not an objective fact.

2 MR. MAY: These people can bring their records  
3 forward and you can, you can test their accuracy.

4 JUDGE CHACHKIN: Well, we're not going to. I'm  
5 telling you right now we're not going to.

6 MR. MAY: Your Honor, we've actually made an  
7 extraordinary showing. There's nothing --

8 JUDGE CHACHKIN: Well, your extraordinary showing  
9 -- no, no, no, no. You're extraordinary showing I thought  
10 would be that you would give me -- you've given me in your 30  
11 individuals here, you've given me what can be argued as  
12 community leaders, and I thought in your extraordinary showing  
13 that you wanted to put in additional community leaders, but  
14 that's not what you've done. You've put on individuals who  
15 somehow have had -- subjectively they've been effected by some  
16 programming. That's what you've given me.

17 MR. MAY: We've given you --

18 JUDGE CHACHKIN: And what I'm saying to you is the  
19 Commission as far as I -- as far as I'm aware and I think Mr.  
20 Honig is correct, the Commission said that we're not going to  
21 get into the question of subjective effective programming,  
22 whether it's classical, whether it's rock music or any other  
23 kind of form of music or programming. We're interested in  
24 looking, by using objective criteria, whether the programming  
25 is of -- whether a program serves the community at large,

1 whether it be public affairs programming, whether it be news  
2 programming or something of that nature, but we're not going  
3 to get to the question about a particular individual may have  
4 a religious experience and they have a moral experience and  
5 what have you on the basis of some particular programmer that  
6 they watched at the station --

7 MR. MAY: Then are we trying --

8 JUDGE CHACHKIN: -- and that's what you're trying to  
9 do here.

10 MR. MAY: What we're attempting to do, Your Honor,  
11 is present the reasons why we felt it would have been  
12 important to have a hearing in Miami, so that there would be  
13 an opportunity for the trier of fact to see the --

14 JUDGE CHACHKIN: Well, I would not -- this testimony  
15 in Miami. These are not community leaders. They're not  
16 giving me objective criteria on which I can make a judgment.  
17 They're testifying about their subjective experience as a  
18 result of watching a particular station.

19 (Off the record.)

20 JUDGE CHACHKIN: And I'm unaware of any Commission  
21 case where the Commission has ever considered such evidence.  
22 The cases that you cite me deal with the question of where the  
23 Commission has said and the courts have said that you could  
24 submit religious program as part of your showing of non-  
25 entertainment programming, but I'm not aware of any case where



1 the Commission has ever considered subjective experiences of  
2 individuals as a result of watching programming, whether it be  
3 classical, whether it be rock music or whether it be any other  
4 format. And I think Mr. Honig is right, the Commission said  
5 specifically that that's not the type of evidence that they  
6 would considered. They're looking for objective evidence,  
7 objective criteria. You serve the community, that you present  
8 program -- that you carry programs involving -- if, for  
9 instance, you conducted a survey and you find that drugs is a  
10 problem or crime is a problem, homeless is a problem, what  
11 programs did you put in to meet those needs? That's the type  
12 of evidence the Commission uses -- looks at in determining  
13 whether or not you're entitled to renewal expectancy.

14 MR. MAY: Your Honor, we believe this is the end  
15 result of exactly that kind of programming, programming that  
16 addresses problems like crime and drug abuse and alcohol abuse  
17 and dysfunctional families, and when people change their minds  
18 as a consequence of that, that's objective and it's something  
19 we believe was important for this agency to see. That's why  
20 we've made our extraordinary showing.

21 JUDGE CHACHKIN: I understand that, but I frankly  
22 don't agree with you and you haven't submitted any case  
23 precedent which supports that and, in fact, the precedent that  
24 Mr. Honig points out is to the contrary. The Commission would  
25 not consider classical music, the fact that people testified

1 that it had benefits to them, the fact that as a result of  
2 watching -- listening to classical music that they felt better  
3 or whatever.

4 MR. MAY: With regard to the WMCN case, Your Honor,  
5 that was an assigned proceeding which was to sort of develop  
6 this idea in the abstract, would a better format be  
7 appropriate, and they decided for First Amendment grounds and  
8 that was not the case. What we're talking about here is not  
9 comparing some meritorious -- versus some abstract. We're  
10 saying here's something that happened, that occurred, that is  
11 meritorious, manifestly so, because people have changed from  
12 being in a position where they were detriments to society, not  
13 happy with themselves, not being productive members of the  
14 civilization and now they are and they specifically attribute  
15 it to what this facility has done. That's why we made the  
16 arguments. That's why we made the presentation.

17 JUDGE CHACHKIN: I understand that and you have not  
18 submitted to me any case support for the proposition that if  
19 subjective experience is relevant in determining renewal  
20 expectancy and, in fact, it would be impossible, as Mr. Cohen  
21 pointed out, to test the, the validity of this, that this, in  
22 fact, was the -- watching the station was, in fact, the reason  
23 that the person changed. I mean, obviously the person  
24 believes he did, but how do you -- but the Commission is not  
25 going to get involved with subjective tests of that nature.

1 That's not what renewal expectancy is all about and that's why  
2 I'm not going to receive that material.

3           So I'm not going to receive your extraordinary  
4 showing for two reasons. First of all, I feel that affording  
5 you an opportunity to present affidavits or declarations of 30  
6 community leaders is reasonable and certainly affords you an  
7 opportunity to show why you're entitled to renewal expectancy.  
8 And, secondly, insofar as your extraordinary showing, first of  
9 all it's outside the 30 community leader limit and, secondly,  
10 the testimony of individuals as to their subjective  
11 experience, their personal religious experience, as a result  
12 of watching the programming is not relevant. They're not  
13 probative of whether you're entitled to renewal expectancy or  
14 not. So I'm not going to receive the extraordinary showing  
15 for those two reasons. Of course, they'll go forward as an  
16 offer of proof.

17           The next question I want to -- as far as the 30  
18 affidavits are concerned or declarations, whatever, Mr. Cohen  
19 has said that he has no desire to cross-examine these  
20 witnesses, that he will make objections, which he's entitled  
21 to, but he has no desire to cross-examine these witnesses.  
22 What is the Bureau's view? Does the Bureau wish to cross --

23           MR. SHOOK: We have no desire either, Your Honor.

24           JUDGE CHACKIN: Mr. Honig, do you wish to cross --

25           MR. HONIG: I have no such desire either.

1 JUDGE CHACHKIN: In light of that fact, then there's  
2 obviously no need for a hearing in Florida concerning the non-  
3 public witnesses. Of course, the parties have reserved their  
4 right to object to receipt of all or some of these exhibits  
5 and I'll make those rulings when, when I rule at the  
6 admissions session.

7 MR. MAY: Your Honor, in addition to the affidavits  
8 that were provided on behalf of the station, SALAD has also  
9 provided a series of --

10 JUDGE CHACHKIN: Well, I was going to get to that.

11 MR. MAY: Oh, I'm sorry.

12 JUDGE CHACHKIN: I was going to get to it. Now that  
13 I've taken care of the ones -- yours, I'm going to get to Mr.  
14 Honig's documents. Do you wish to cross-examine any of these  
15 individuals?

16 MR. MAY: Your Honor, we do wish to cross-examine  
17 some of these individuals.

18 JUDGE CHACHKIN: Which of the individuals do you  
19 wish to cross-examine?

20 MR. MAY: We believe we'd like to cross-examine all  
21 of the individuals.

22 JUDGE CHACHKIN: All of the individuals. All right.  
23 Anyone else wish to cross-examine any of these individuals?

24 MR. COHEN: Your Honor, I would, I would like to ask  
25 you to review what, what -- where we stand in terms of what --

1 before I respond that is, as to what procedures are available,  
2 what procedures you're going to follow. It was my  
3 understanding at the last conference that you were -- I'm not  
4 clear, but I thought that you were inclined to follow the  
5 procedures you had followed in earlier cases which was  
6 followed in the Longmont proceeding, to wit, that you didn't  
7 hear these non-public witnesses' testimony, but that  
8 depositions were taken and then the depositions were entered  
9 into evidence along with the, the declarations and it's  
10 relevant to me to know -- in terms of responding to your  
11 question, to know if that's the procedure you propose to  
12 follow in this case.

13 JUDGE CHACKIN: Well, I see no reason not to follow  
14 that procedure, to let the parties depose these individuals at  
15 the time the depositions are taken of the principles. We're  
16 dealing here with -- what is it, less than ten witness? I see  
17 no reason or that any useful purpose will be served if a  
18 hearing was held for that purpose. I think this can be done  
19 by deposition.

20 MR. COHEN: Well, then -- and I agree, Your Honor.  
21 I think that that's the preferred procedure. I don't know  
22 whether Glendale will definitely depose any of these persons  
23 or not. Certainly if Mr. May tells me that he's not, then I'm  
24 sure my client won't, but if he's going to depose them, then  
25 I'd like to reserve the right to do it, Your Honor. But I

1 don't want the record to reflect that we're -- our client is  
2 inclined to do that absent Mr. May.

3 JUDGE CHACHKIN: Mr. Honig, how many declarations do  
4 you have here?

5 MR. HONIG: We have 11 that were exchanged on August  
6 10th. Yesterday we exchanged one additional one, regret that  
7 we did not transmit you your copy and I have it for you here  
8 and would like to give it to you.

9 JUDGE CHACHKIN: Is that Dr. Andrew Cherry or is it  
10 an additional one?

11 MR. HONIG: No. This is Dr. Kathleen Shea.

12 JUDGE CHACHKIN: Oh, all right.

13 MR. HONIG: So we just have the 12 witnesses.

14 JUDGE CHACHKIN: All right. Well, I -- unless  
15 someone has any strong objection, I don't see why at the time  
16 that depositions are taken that the depositions of these  
17 individuals cannot also be taken at that time.

18 MR. HONIG: Your Honor, not having been in one of  
19 these cases before, I would appreciate some guidance. What do  
20 you construe the scope of examination of these witnesses? I  
21 think it's that they have testified to a very narrow question  
22 essentially as experts. Only one of them states that he is a  
23 regular viewer of the station. The others are not regular  
24 viewers of the station, although they do -- some of them have  
25 indicated they watch it on occasion, and they're simply

1 speaking to their review of the issues programs list for the  
2 most part and -- which are held out to the public as  
3 representative of the station's programming and their  
4 impressions of the responsiveness of that. I can't see how  
5 extensive depositions of these individuals would add anything  
6 material to the record at all but, if so, I am curious as to  
7 what scope is intended and what is proper.

8 JUDGE CHACHKIN: Well, the cross-examine obviously  
9 -- I mean, the depositions, would have to deal with that  
10 declaration. I must say in reviewing this material I had some  
11 questions about to what extent this is probative of the  
12 station's programming if these individuals had not listened to  
13 the station. I understand they have testified that in certain  
14 areas they were never called. They were never asked to appear  
15 on the station, and that is a fact. And either the station  
16 did make an effort to have them appear on the station and they  
17 didn't, and if they were substantial individuals, then I think  
18 that raises the question of why the station did not have them  
19 appear on any of their public affairs programs.

20 As far as their testifying as to what the issues and  
21 programs lists concern in making a subjective evaluation, I  
22 don't see how that's relevant. I mean, that's for the trier  
23 of the fact to decide whether or not that issues programs list  
24 is, is consistent with what the station -- surveys that the  
25 station conducted as to what the needs of the community are

1 and whether the program that they do present meets those  
2 needs, was responsive to the, to the issues programs list. So  
3 their review of these programs is irrelevant.

4 Now, insofar as they have any information as to the  
5 station's failure to carry, carry programming dealing with  
6 issues, as you say, of housing -- homelessness or what have  
7 you, it would certainly be relevant if those were needs that  
8 the station claims that they're meeting and in, in fact, they  
9 did meet those needs.

10 So, so -- what I'm saying is much of these  
11 declarations insofar as that -- first of all, as far -- these  
12 declarations, insofar as they just review programs lists, it  
13 doesn't seem to be relevant. It's not something for them to  
14 determine, issues programs lists, their review of it, and I  
15 don't see how that could possibly be relevant.

16 Insofar as they were not -- they are substantial  
17 citizens, public leaders and they did not -- were not asked to  
18 appear on any programming, that could be relevant. Insofar as  
19 they have evidence as to the station's programming and how the  
20 station has met any of these needs, that would be relevant.  
21 But when you tell me that, for the most part, most of these  
22 individuals if they view at all, they do it very sporadically.  
23 They obviously don't have any knowledge of the station's  
24 programming.

25 MR. HONIG: Your Honor, if I may respond. With one



1 | exception, which is Professor Jones who is both an expert and  
2 | a viewer, these are not regular viewers. But I think that,  
3 | that question of the responsiveness of the station was  
4 | intended by the Commission to be reviewed in the context of  
5 | issues programs lists. The DC circuit in the UCC3 case, the  
6 | appeal of radio deregulation, held that it was essential to  
7 | have these issues programs lists because you couldn't expect  
8 | viewers to watch 24 hours a day or even necessarily to watch  
9 | extensively, but it was that the availability of these  
10 | documents in the public file is the one necessary protection  
11 | to be sure that stations in fact respond to needs. And the  
12 | type of information that the Commission has requested, which  
13 | is what were the program's responses to those needs and is  
14 | presented so that the public can review those files, review  
15 | them in the context of their understandings and needs and  
16 | present their views.

17 |           I would agree that the Commission limited somewhat  
18 | the relevance of an objection along the lines of housing isn't  
19 | a community need, but employment is, for example. That's  
20 | within the discretion of the licensee. But it did intend, and  
21 | the court affirmed, that having issues programs lists is the  
22 | primary way that citizens can review programming for  
23 | responsiveness in order to make an objective determination of  
24 | whether it is meritorious.

25 |           JUDGE CHACKIN: But that's not -- I'm not, I'm not